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IN THE

Supreme Court of the United States

October Term, 1966

No. 735

EPIFONIO GARCIA, *et als.*,

Appellants,

vs.

BALBINO MORALES,

Appellee.

On Appeal from the Supreme Court of the State of New Jersey

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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Introductory Statement

This is a brief in opposition to a Motion to Dismiss submitted by the Appellees, Balbino Morales and the New Jersey Unsatisfied Claim and Judgment Fund. The motion has, as its basis, three points, of which only Point I disputes this Court's jurisdiction to hear the case. Therefore, only Point I will be answered, appellants relying upon their Jurisdictional Statement and Appellate Brief, should this Court desire to judge the issues presented, to answer the issues posed in Points II and III by the appellees.

ARGUMENT

The judgment of the New Jersey court in upholding a statute challenged on the federal constitutional ground of denial of equal protection is a sufficient basis for review by this court.

The New Jersey Supreme Court denied appellant's request that N.J.S.A. 39:6-69(b) be excised for the stated reason:

> "It is clear beyond reasonable doubt that the legislature intended section 69(a) to relate only to the situation where one person is injured in one accident and the provide a maximum recovery of $10,000 for such person. *Garcia* v. *Morales,* 47 N.J. 269, 220 A2d 198 (1966).

Assuming the validity of this assertion, it follows that the Statute is void on its face. It is conceded by the New Jersey Court that the statute operates to favor one or two victims of an unusual driver over those persons injured in accidents where three or more persons are seriously harmed. This not only frustrates the basic legislative intent but also deprives the multiple victims of their right to equal protection under the federal constitution.

The Legislature in N.J.S.A. 39:6-69(a) has created a basic measure of relief up to $10,000 for each person injured by a uninsured motorist. Then in section 69(b), it has arbitrarily limited this amount to $20,000 per accident which bears no relation to the purpose of the Act and its purpose of providing for a basic minimum amount to go to innocent victims of negligent drivers.

Concededly, the State need not extend any benefits to those injured by uninsured motorists. However, once created, the XIVth Amendment of the Constitution extends equal protection not only to rights but also privileges which the State provides. *State of Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 307, 83 L. Ed. 208, 59 S. Ct. 232 (1938).

The New Jersey case of *Kutcher* v. *Newark Housing Authority,* 20 N.J. 181, 119 A2d 1 (1955), further notes:

> "The state may not condition a privilege which it may deny altogether on a surrender of constitutional right." Accord, *Frost* v. *Railroad Commission of State of California,* 271 U.S. 583, 70 L. Ed. 1101, 46 S. Ct. 605 (1926); *Terral* v. *Burke Const. Co.,* 257 U.S. 529, 66 L. Ed. 352, 42 S. Ct. 188 (1922).

Further, the obligation of

> "The state to afford equal protection is not diminished or altered by reason of the number of persons involved." *Pearson* v. *Murray,* 182 A. 590 (Ct. of Appeals, Maryland, 1936), citing *McCabe* v. *Atchison T. & S.F.R. Co.,* 235 U.S. 151, 59 L. Ed. 169, 35 S. Ct. 69.

While the State Court did not explicitly rule on the validity of the statute, where there is a failure of a State Court to rule on the federal constitution objection to the statute, it is equivalent to a finding of validity and an appeal will lie. *Lawrence* v. *State Tax Commission,* 286 U.S. 276, 76 L. Ed. 1102, 52 S. Ct. 556 (1932). Further, when the State Court limits the appellant's challenge to a particular set of facts, in this instance, ruling only that the judiciary cannot extend liability, and the result is to uphold the validity of the statute, appeal will lie. *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U.S. 282, 66 L. Ed. 239, 42 S. Ct. 106 (1921).

In response to the New Jersey Court's statement, that they will not increase the monetary liability of the Fund beyond the limit intended by the Legislature, *Garcia* v. *Morales, supra,* a quote from *Collins* v. *State Board of Welfare,* 248 Iowa 369, 81 N.W. 2d 4 (1957) is enlightening. In this case, the announced purpose of a child welfare act was to aid needy children. Each child adjudged needy was to receive $47 per month for support. An amendment to the statute limited this amount to $175 for each house-

hold. The Iowa Supreme Court found the amendment to be unconstitutional, stating:

> "The Amendment on its face appears to be and was, we think, intended as an economy measure. In effect, it is a subclassification of the original classification, i.e., dependent children, based solely upon the number of children in the home, with no consideration as to need, a circumstance, completely disconnected with the basic classification and the purpose and reason therefore. We think the amendment is clearly discriminating between dependent children as defined in Section 239.1(4) and is purely arbitrary and unreasonable in view of the announced purpose of the act".

It is then obvious that the Iowa Court's holding could increase the State's liability beyond what the legislature may have intended. Appellants submit that it was no reason to uphold the statute in Iowa and should not be the reason for upholding in New Jersey. Accord, *Verona* v. *Civil Service Commission,* 135 N.J.L. 539, 53 A. 2d 360 (Supreme Court 1947).

CONCLUSION

For the reasons argued above, it is respectfully submitted that the New Jersey Supreme Court decision to uphold the statute provides sufficient constitutional grounds for an appeal to lie.

Respectfully submitted,

EDWARD B. MEREDITH,
Attorney for Appellants.